

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

3  
4 DAVID A. RUBEN, M.D.

5  
6 Holder of License No. 11382  
7 For the Practice of Allopathic Medicine  
in the State of Arizona.

Office of Administrative Hearings Case  
No. 09A-11382-MDX;  
Arizona Medical Board  
Case No. MD-07-0923A

CONSENT AGREEMENT FOR  
LETTER OF REPRIMAND AND  
PROBATION

8 CONSENT AGREEMENT

9 By mutual agreement and understanding, between the Arizona Medical Board  
10 ("Board") and David A. Ruben, M.D. ("Respondent"), the parties agree to the following  
11 disposition of this matter.

12 1. Respondent has read and understands this Consent Agreement and the  
13 stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement").  
14 Respondent acknowledges that he has the right to consult with legal counsel regarding  
15 this matter.

16 2. By entering into this Consent Agreement, Respondent voluntarily  
17 relinquishes any rights to a hearing or judicial review in state or federal court on the  
18 matters alleged, or to challenge this Consent Agreement in its entirety as issued by the  
19 Board, and waives any other cause of action related thereto or arising from said Consent  
20 Agreement.

21 3. This Consent Agreement is not effective until approved by the Board and  
22 signed by its Executive Director.

23 4. The Board may adopt this Consent Agreement or any part thereof. This  
24 Consent Agreement, or any part thereof, may be considered in any future disciplinary  
25 action against Respondent.

1        5. This Consent Agreement does not constitute a dismissal or resolution of  
2 other matters currently pending before the Board, if any, and does not constitute any  
3 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any  
4 other pending or future investigation, action or proceeding. The acceptance of this  
5 Consent Agreement does not preclude any other agency, subdivision or officer of this  
6 State from instituting other civil or criminal proceedings with respect to the conduct that is  
7 the subject of this Consent Agreement.

8        6. All admissions made by Respondent are solely for final disposition of this  
9 matter and any subsequent related administrative proceedings or civil litigation involving  
10 the Board and Respondent. Therefore, said admissions by Respondent are not intended  
11 or made for any other use, such as in the context of another state or federal government  
12 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or  
13 any other state or federal court.

14        7. Upon signing this agreement, and returning this document (or a copy thereof)  
15 to the Board's Executive Director, Respondent may not revoke the acceptance of the  
16 Consent Agreement. Respondent may not make any modifications to the document. Any  
17 modifications to this original document are ineffective and void unless mutually approved  
18 by the parties.


19        8. If the Board does not adopt this Consent Agreement, Respondent will not  
20 assert as a defense that the Board's consideration of this Consent Agreement constitutes  
21 bias, prejudice, prejudgment or other similar defense; likewise, the Board will not use this  
22 document as an admission or otherwise against Respondent.

23        9. This Consent Agreement, once approved and signed, is a public record that  
24 will be publicly disseminated as a formal action of the Board and will be reported to the  
25 National Practitioner Data Bank and to the Arizona Medical Board's website.

1 10. If any part of the Consent Agreement is later declared void or otherwise  
2 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force  
3 and effect.

4 11. Any violation of this Consent Agreement constitutes unprofessional conduct  
5 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("violating a formal order,  
6 probation, consent agreement or stipulation issued or entered into by the board or its  
7 executive director under this chapter") and 32-1451.

8 12. *Respondent has read and understands the conditions of probation.*

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11 \_\_\_\_\_  
12 DAVID A. RUBEN, M.D.

DATED: 3-2-09

13 APPROVED AS TO FORM

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15 \_\_\_\_\_  
16 ROBERT WOLKIN, ESQ.

DATED: 3/2/09

1 FINDINGS OF FACT

2 1. The Board is the duly constituted authority for the regulation and control of  
3 the practice of allopathic medicine in the State of Arizona.

4 2. Respondent is the holder of license number 11382 for the practice of  
5 allopathic medicine in the State of Arizona.

6 3. The Board initiated case number MD-07-0923A after receiving a complaint  
7 regarding Respondent's care and treatment of a thirty-four year-old female patient ("DK").

8 4. On November 17, 2006, DK first presented to Respondent through self  
9 referral complaining of lower back pain and psychiatric issues. DK reported her current  
10 pain management medications as OxyContin, Oxycodone, Vailum and Paxil. DK also  
11 reported having imaging studies and x-rays done three years prior to her visit. Although  
12 Respondent requested at this first meeting and four times subsequently that DK provide  
13 him with her medical records and film, she did not comply until December, 2007. At this  
14 first visit, Respondent prescribed OxyContin and Vailum at the reported doses and  
15 increased the Oxycodone dosage from the reported dosage. Subsequently, Respondent  
16 prescribed medications on a monthly basis and in December 2006, he added Wellbutrin  
17 for increasing depression. Respondent did not obtain urine drug tests to monitor  
18 compliance before June 2008, or order additional testing to identify the source of DK's  
19 pain.

20 5. On August 29, 2007, Respondent provided DK with early refills of OxyContin  
21 and Oxycodone, although he decreased the Oxycodone dosage.

22 6. On October 19, 2007, Respondent saw DK and a family member, who both  
23 insisted that DK was compliant with her treatment. Respondent then wrote DK her usual  
24 opioid prescriptions. However, later that day, Respondent received written documentation  
25 from another patient that DK was recently discharged from the care of another physician

1 for violating a pain agreement. Respondent subsequently took appropriate measures in an  
2 attempt to prevent DK from filling the prescription he had written earlier that day.

3 7. Respondent later learned from the other provider that DK had tested positive  
4 for cocaine and Methadone (which was not prescribed to her). Respondent referred DK to  
5 Behavioral Health for substance abuse issues, but he continued to prescribe opiates to DK  
6 for her back pain. Further, Respondent continued to prescribe opiates to DK after he  
7 learned that she had successfully completed inpatient opioid detoxification.

8 8. The standard of care requires a physician to base new or continuing high  
9 dose opioid prescriptions for a self-referred, chronic pain management patient (who  
10 reports currently being prescribed high dose opioid medications) on proper indications,  
11 including previous medical records and verified previous prescriptions, and/or contact with  
12 the previous prescribing physician.

13 9. Respondent deviated from the standard of care by prescribing high dose  
14 opioids to DK without proper indications.

15 10. The standard of care when treating a chronic pain patient who has a known  
16 or suspected substance abuse problem is to utilize objective measures to monitor  
17 compliance.

18 11. Respondent deviated from the standard of care by failing to timely use  
19 objective measures, such as urine drug tests, to assess DK's compliance with her  
20 treatment even after he was aware of her cocaine addiction.

21 12. As a result of Respondent's conduct, DK might have suffered an accidental  
22 overdose resulting in respiratory depression, aspiration, brain damage, or death. In  
23 addition, Respondent's inappropriate prescribing might have been perpetuated DK's  
24 aberrant drug seeking and addiction.

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1 d. Obey All Laws

2 Respondent shall obey all state, federal and local laws, all rules governing the  
3 practice of medicine in Arizona, and remain in full compliance with any court ordered  
4 criminal probation, payments and other orders.

5 e. Tolling

6 In the event Respondent should leave Arizona to reside or practice outside the  
7 State or for any reason should Respondent stop practicing medicine in Arizona,  
8 Respondent shall notify the Executive Director in writing within ten days of departure and  
9 return or the dates of non-practice within Arizona. Non-practice is defined as any period of  
10 time exceeding thirty days during which Respondent is not engaging in the practice of  
11 medicine. Periods of temporary or permanent residence or practice outside Arizona or of  
12 non-practice within Arizona, will not apply to the reduction of the probationary period.

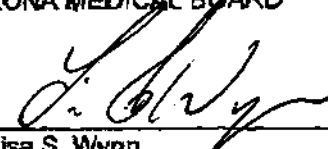
13 3. This Order is the final disposition of case number MD-07-0923A and Office of  
14 Administrative Hearings case #09A-11382-MDX.

15 DATED AND EFFECTIVE this 15<sup>th</sup> day of APRIL, 2009.



ARIZONA MEDICAL BOARD

17 By

18   
19 Lisa S. Wynn  
20 Executive Director  
21  
22  
23  
24  
25

1 ORIGINAL of the foregoing filed  
2 this 1<sup>st</sup> day of April, 2009 with:

3 Arizona Medical Board  
4 9545 E. Doubletree Ranch Road  
5 Scottsdale, AZ 85258

6 EXECUTED COPY of the foregoing mailed  
7 this 1<sup>st</sup> day of April, 2009 to:

8 Robert Wolkin, Esq.  
9 3301 East Camino Campestre  
10 Tucson, Arizona 85718-5829

11 EXECUTED COPY of the foregoing mailed  
12 this 1<sup>st</sup> day of April, 2009 to:

13 David A. Ruben, M.D.  
14 Address of Record

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17 Investigational Review

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